

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
vs.	:	
	:	
SHAWN JACKSON	:	NO. 99-395-01

ORDER AND MEMORANDUM

ORDER

AND NOW, this 13th day of March, 2002, upon consideration of the Motion of Defendant, Shawn Jackson, to Modify Term of Imprisonment (Document No. 10, filed December 13, 2001), and the Government's Response to Defendant's Motion to Modify Term of Imprisonment Pursuant to U.S.C. § 3582(c)(2) (Document No. 13, filed February 19, 2002), for the reasons set forth in the following Memorandum, **IT IS ORDERED** that the Motion of Defendant, Shawn Jackson, to Modify Term of Imprisonment is **DENIED**.

MEMORANDUM

Defendant, Shawn Jackson, was charged in a one count Indictment with a violation of U.S.C. § 922(g) - felon in possession of a firearm. He pled guilty to that charge and on February 9, 2000, was sentenced, *Inter alia* to serve forty-one (41) months incarceration. At sentencing, the Court recommended that defendant be considered for the Bureau of Prisons five-hundred (500) hour long-term drug treatment program and that upon completion of that program " ... defendant be considered for placement in the Intensive Confinement Center Program if he meets the criteria for that program." (Sentencing Trans., 2/9/00 at 16).

Counsel for defendant questioned the Court as to whether, under the Court's recommendation, the drug treatment program was a prerequisite to inclusion in the Intensive

Confinement Center Program, and asked the Court to recommend that defendant be considered for the Intensive Confinement Center Program in the event he was deemed ineligible for the drug treatment program. Defense counsel's request was based on his stated concern that, because of defendant's firearm conviction, he would not be eligible for the five-hundred (500) hour long-term drug treatment program and that, as a result of the wording of the Court's recommendation, he would not be considered for participation in the Intensive Confinement Center Program in that event. The Court did not share defense counsel's concern and noted on the record that the firearm conviction was likely to make the defendant ineligible for the Intensive Confinement Center Program, not the long-term drug treatment program. In any event, the Court then stated that "I'm not going to amend the recommendation, but if there is a problem with it, then call it to my attention and I will talk to the Bureau of Prisons and perhaps amend the sentence." (Sentencing Trans., 2/9/00 at 17).

Defendant reported that he qualified for the long-term drug treatment program and it appears from his Motion that he either completed, or soon will be complete, that program. However, defendant complains that the Bureau of Prisons has denied him the opportunity to receive the incentive sentencing reduction offered for successful completion of the program under 18 U.S.C. § 3621(e)(2)(B). That section of the statute provides that: "The period a prisoner convicted of a non-violent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve."

The Bureau of Prisons has declined to reduce defendant's sentence under 18 U.S.C. § 3621(e)(2)(B) because the provision is applicable only to non-violent offenses, whereas

defendant was convicted of a crime of violence, a gun offense. The Court does not disagree with the position taken by the Bureau of Prisons.

The Motion to Modify Term of Imprisonment does not set forth any ground which would warrant a modification of defendant's sentence. The Motion is, therefore, denied.

BY THE COURT:

JAN E. DUBOIS